

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

EARL INGELS,

Petitioner, : Case No. 1:21-cv-561

- vs -

District Judge Matthew W. McFarland
Magistrate Judge Michael R. Merz

WARDEN, North Central
Correctional Institution,

:
Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Motion for Reconsideration of the Denial of a Certificate of Appealability (ECF No. 51). As a post-judgment motion, it requires a report and recommendations from an assigned Magistrate Judge.

In the text of the Motion, Petitioner refers to reconsideration under Fed.R.Civ.P. 59(e)(ECF No. 51, PageID 1851). Assuming that is the rule under which Petitioner seeks reconsideration, this Court is without jurisdiction to grant that relief. Judgment was entered in this case December 29, 2022 (ECF No. 42). Rule 59(e) provides that a motion to amend or alter the judgment must be filed no later than twenty-eight days after judgment. The deadline was January 26, 2023, and Fed.R.Civ.P. 6 forbids extending that time. The instant Motion was not filed until September 5, 2023, more than seven months late.

As required by Habeas Rule 11, Judge McFarland considered the question of issuing a certificate of appealability in the final judgment in this case and rejected it (ECF No. 41, PageID

1798). The Sixth Circuit independently¹ considered that question and denied a certificate of appealability (ECF No. 49).

Because we lack jurisdiction to consider a late Rule 59(e) motion, the instant Motion should be denied.

September 6, 2023.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

s/ *Michael R. Merz*
United States Magistrate Judge

¹ A circuit court's consideration of a motion for certificate of appealability is not an appeal from a district court's denial of one, but an independent and *de novo* consideration of the question.